CHONG PENG HAN & ORS.

v.

CHONG TOH JIN & ORS.

HIGH COURT, SINGAPORE
FA CHUA J
[ORIGINATING SUMMONS NO. 258 OF 1987]
31 JULY 1989

SUCCESSION: *Probate - The real construction of a will - Intention of the testator - Read as a whole in the light of the surrounding circumstances - Contingency interest.*

The plaintiffs by way of originating summons sought directions of the Court as to the construction of their grandfather's will, in particular Clause 6(c) of the will. The testator made a will dated 17 September 1966 and died on 21 December 1966. The 1st defendant and one Teo Keck Seng were appointed executors. However, Mr. Teo renounced probate and the 2nd defendant was appointed the executrix by the Court.

Clause 6(c) read as follows:

> Within 12 months from my date of death, to convey back transfer or vest the said trust premises (i.e. freehold land and house known as No. 2 Gray Lane, Singapore) into my grandsons Chong Peng Leong, Chong Peng Tiong and Chong Peng Choon who shall thereafter become joint tenants of the trust premises. If Chong Peng Leong shall predecease the others, my grandsons Chong Peng Han, Chong Peng Kiat and Chong Peng Hong shall be joint tenants of the trust premises.

A deed of abscence dated 15 December 1982 between the executors and the 3 beneficiaries (i.e. 3rd and 4th defendants and one Chong Peng Tiong) was executed whereby the executors assented to the vesting of the trust premises in the said beneficiaries for an estate in fee simple as joint tenants and as absolute and beneficial owners.

The plaintiffs' contention is that Clause 6(c) gives the 3rd and 4th defendants and Chong Peng Tiong a contingent interest in the trust premises which terminates on the 3rd defendants predeceasing the others and that the plaintiffs take a remainder in the trust premises subject to the interest of 3rd and 4th defendants and Chong Peng Tiong.

Held:

[1] The object of the Court in construing a will is to ascertain the intention of the testator as expressed in his will when it is read as a whole in the light of the surrounding circumstances in which it was made.

[2] Here, the intention of the testator can in fact be gathered from the Chinese document which he executed on the same day as the said will wherein he expressed that there is a necessity for this codicil because of item 6(c) of the will.

[3] The intention of the testator was to benefit the 3rd and 4th defendants and Chong Peng Tiong who were given the unconditional and absolute right to sell the trust premises and share the proceeds. As long as the trust premises is not sold, the 3rd defendant and the plaintiffs have the right to live in it. It was not intended that the plaintiff should have the trust premises.

[4] In this case, since the 3rd defendant survived the period of 12 months after the testator's death, the contingency upon which the gift over to the plaintiffs is to take effect can no longer operate. The gift to 3rd and 4th defendant and Chong Peng Tiong becomes indefeasible and absolute and the gift over to the plaintiffs defeated.

[Judgment for the defendants.]

For the plaintiffs - G. Raman
For the 1st, 3rd & 4th defendants - D. Chelliah
For the 2nd defendant - Han Kee Fong

JUDGMENT

FA Chua J:

The plaintiffs, grandsons of Chong Che Cheng deceased, (the testator), by this originating summons seek directions of the Court as to the construction of their grandfather's will.

The testator made a will dated 17 September 1966. He died on 21 December 1966. The executors appointed were Chong Toh Jin, the first defendant, and Teo Keck Seng. Teo Keck Seng renounced probate and the second defendant, Chong Peng Hua, was appointed the executrix by the Court on 11 March 1968.

The clause in the will which falls to be construed is Clause 6 which reads as follows:

> 6. I give and devise all that my freehold land and house known as No. 2 Gray Lane, Singapore and comprised as Lot 80 [54] (hereinafter referred to as "the trust premises" unto my trustees upon trust that is to say:
>
> (a) that Chong Che Cheng & Company Limited shall subject to the provisions of hereinafter appearing be entitled to occupy the first floor of the trust premises during the lifetime of my youngest grand-child. After my youngest grandson becomes 21 years, if Chong Che Cheng & Company Limited shall continue to occupy the first floor and the joint tenants agree to let, then Chong Che Cheng & Company Limited shall pay an agreed monthly sum to the joint tenants being rent of the floor.
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> (b) My wife, Yap Poh Lai shall during her lifetime be entitled to reside and live on the ground floor of the said trust premises free of rent and other charges.
>
> (c) Within 12 months from my date of death, to convey back transfer or vest the said trust premises unto my grandsons Chong Peng Leong, Chong Peng Tiong and Chong Peng Choon who shall thereafter become joint tenants of the trust premises. If Chong Peng Leong shall pre-decease the others, my grandsons Chong Peng Han, Chong Peng Kiat and Chong Peng Hong shall be joint tenants of the trust premises.
>
> (d) The property tax, assessment of rates and other outgoings payable in respect of the trust premises shall be borne and paid by the said Chong Che Chong & Company Limited so long as they continue to occupy the first floor of the trust premises as herein provided.

Chong Che Cheng & Co. Ltd. was wound up by an order of Court dated 28 November 1969. The testator's wife, Yap Poh Lai, died on 13 October 1986. The youngest grandson of the testator at the time of the death of the testator was Chong Peng Choon, the fourth defendant, and he has since attained the age of twenty-one.

The plaintiffs and Chong Peng Leong, the third defendant, are the sons of Chong Toh Hui.

The defendants have executed three separate documents in respect of the trust premises and they have been registered at the registry of deeds:

(a) A deed of assent dated 15 December 1982 made between the first and second defendants as executors and Chong Peng Leong, Chong Peng Choon, Chong Peng Tiong as beneficiaries whereby the executors assented to the vesting of the trust premises in the said beneficiaries for an estate in fee simple as joint tenants and as absolute and beneficial owners thereof.

(b) A deed of severance dated 15 December 1982, made by Chong Peng Leong, Chong Peng Choon and Chong Peng Tiong whereby they severed their joint tenancy of the trust premises and purported to hold the trust premises as beneficial tenants in common in equal shares.

(c) A deed of gift dated 15 December 1982, whereby Chong Peng Tiong assigned his rights in the trust premises to the first defendant, his father.

The plaintiffs' contention is that Clause 6(c) gives to Chong Peng Leong and Chong Peng Choon, the third and fourth defendants, and to Chong Peng Tiong a contingent interest in the trust premises which terminates on Chong Peng Leong predeceasing Chong Peng Choon and Chong Peng Tiong and that the plaintiffs take a remainder in the trust premises subject to the interest of Chong Peng Leong, Chong Peng Choon and Chong Peng Tiong.

The contention of the first, third and fourth defendants is that the testator by Clause 6(c) had devised the trust premises to Chong Peng Leong, Chong Peng Choon and Chong Peng Tiong as joint tenants of the trust premises.

The object of the Court in construing a will is to ascertain the intention of the testator as expressed in his will when it is read as a whole in the light of the surrounding circumstances in which it was made (*Theobald on Wills*, 14 Edn., p. 185).

Reading Clause 6(c) in the ordinary and literal sense, it amounts to a gift of the trust premises to Chong Peng Leong, Chong Peng Choon and Chong Peng Tiong as joint tenants subject to the condition that if Chong Peng Leong predeceased the "others", the property is to be given to the plaintiffs as joint tenants. There is also an express direction for the gift to vest within twelve months of the testator's death.

The express direction to vest the trust premises in Chong Peng Leong, Chong Peng Choon and Chong Peng Tiong gave them a vested interest in the trust premises. The interest that Chong Peng Leong, Chong Peng Choon and Choon Peng Tiong then took was an interest in remainder as it was then subject to the prior enjoyment to the same by Chong Che Cheng & Co. Ltd and the testator's widow.

When the respective interests given to the said company and the testator's widow came to an end, the vested interests of Chong Peng Leong, Chong Peng Choon and Chong Peng Tiong gave them the right to immediate possession and enjoyment of the trust premises. As between them and the plaintiffs the interests given to them respectively under Clause 6(c) are that Chong Peng Leong, Chong Peng Choon and Chong Peng Tiong are joint tenants. In the event Chong Peng Leong predeceasing "the others" the interest in the trust premises is to be given over to the plaintiffs. The testator has clearly prescribed this contingency as the event giving effect to the gift over of the trust premises to the plaintiffs. However, the testator has not expressly provided or stipulated the time or period as to when the contingency is to occur in order to determine if the gift over is to take effect or to be defeated.

The testator expressly directed his trustees: "within 12 months from my date of death to convey back transfer or vest the said trust premises to my grandsons.." This clearly indicates that the testator intended to restrict the period within which the contingency of the death of Chong Peng Leong is to occur to within twelve months of his death. It is not right that one should wait indefinitely to see if the gift to the plaintiffs would materialise and vest.

The intention of the testator can be gathered from the Chiness document which he executed on the same day as the said will (Ex. CPL 6A, exhibited to the affidavit of Chong Peng Leong filed on 16 May 1987) wherein he expressed his thoughts thus:

> Wills generally have to comply with the law, and to comply with the law is very troublesome. There is a necessity for this codicil because of item 6(c) of the will (which reads) "Within twelve..." ctd. "...months of my death, my trustee shall transfer this property to my grandsons Chong Peng Leong, Chong Peng Teong and Chong Peng Choon." My original intention was only Chong Peng Leong alone. The reason of bringing in Chong Peng Teong, Chong Peng Chong is to prevent Chong Peng Leong from selling it alone and by himself. If it is sold, then it has to be shared by three persons, and if it is not sold then it shall forever be the common residence of Chong Peng Leong and brothers Peng Han, Peng Keat and Peng Hong. The father/fathers of Peng Teong, Peng Choon has/have his/their own house/houses (and Peng Teong and Peng Choon) should not dispute over the right to live in it. As regards transferring (of the property) within twelve months, it does not matter to delay executing it for a considerable time.

The intention of the testator was to benefit Chong Peng Leong, Chong Peng Choon and Chong Peng Tiong. They were given the unconditional and absolute right to sell the trust premises and share the proceeds. As long as the trust premises is not sold, Chong Peng Leong and the plaintiffs have the right to live in it. It is clear that the testator did not intend that the plaintiffs should have the trust premises. The only interest he had in mind was the interest of Chong Peng Leong and for reasons best known to the testator he decided that it might not be in the interest of Chong Peng Leong, who was then an infant, to transfer the trust premises to him alone and therefore brought in Chong Peng Choon and Chong Peng Tiong.

In my view, in the circumstances of this case, since Chong Peng Leong survived the period of twelve months after the testator's death, the contingency upon which the gift over to the plaintiffs is to take effect can no longer operate. The gift to Chong Peng Leong, Chong Peng Choon and Chong Peng Tiong therefore becomes indefeasible and

absolute and the gift over to the plaintiffs defeated. The result is that Chong Toh Jin (the first defendant), Chong Peng Leong and Chong Peng Choon are now absolute owners of the trust premises.

I will now hear the parties on costs.

Also found at [1989] 2 CLJ 888